To: Gwinn, Maureen[gwinn.maureen@epa.gov]; Blackburn, Elizabeth[Blackburn.Elizabeth@epa.gov]; Kavlock, Robert[Kavlock.Robert@epa.gov]
From: Deener, Kathleen
Sent: Wed 2/8/2017 3:39:53 PM
Subject: FW: News Update: Rep. Smith Rejects Democrats' Criticisms Over EPA 'Secret Science' Bill (Inside EPA)

FYI, from Inside EPA yesterday.

Rep. Smith Rejects Democrats' Criticisms Over EPA 'Secret Science' Bill (Inside EPA)

February 07, 2017

Rep. Lamar Smith (R-TX), the chairman of the House science committee, appeared to reject concerns from Democrats and their witness with the substance of an upcoming bill he is expected to advance seeking transparency in EPA's scientific process, arguing that medical privacy concerns are easily addressed and information that EPA uses for decision-making should be publicly available.

As introduced in 2015, the so-called secret science bill's intent was to require EPA to use the "best available," reproducible science in developing rules and make all data underlying its rules publicly available. Such a mandate can be challenging with some of the data that EPA relies on, such as epidemiological data and medical records, or even data with certain copyright protections.

The agency's critics argued the legislation, H.R. 1030, would resolve their long-running claims that the agency withholds important data that it uses to justify potentially expensive rules, such as its 2015 decision to tighten the ozone national ambient air quality standard from 75 parts per billion (ppb) to 70 ppb and its fine particle (PM2.5) standards.

Reforming EPA's scientific methods is a priority for Smith and other agency critics, who see it as essential to rolling back the agency's regulatory standards.

For example, Myron Ebell, the former head of the Trump transition team at EPA, told *Inside EPA* in a Feb. 7 interview that he expects “dramatic changes” for EPA's scientific mission from the Trump administration, especially given the agency's use of private medical data to justify its PM2.5 standards.

“If the Trump EPA is serious about reforming science, then the first thing that is going to go are the claims made about PM2.5 on the basis of studies that are secret, cannot be replicated and are not subject to analysis or criticism outside of the agency,” he said.

Smith, who sponsored the legislation in the last Congress, has said he intends to revisit it, along with a related bill known as the Science Advisory Board (SAB) reform bill, during this session of Congress.

But during a Feb. 7 hearing on the legislation, Rep. Elizabeth Esty (D-CT) raised concerns that in her view, “some of the longitudinal studies would not be allowed anymore under some of the proposals we're looking at under” the secret science bill.

Rush Holt, CEO of the American Association for the Advancement of Science (AAAS) and formerly a Democratic representative from New Jersey, agreed that the bill, as considered in the last Congress, would prevent EPA from considering important data.

As an example, Holt pointed to research on “chemically-induced birth defects. No family wants the newspapers or the webpages to be listing information about their kids' birth defects. But if you're gonna study birth defects you gotta look at actual kids and study the epidemiology. The Secret Science Reform Act presumably would have prevented that kind of necessary research.”

Smith interjected, “I think Dr. Holt knows as well as anybody there's such a thing as redactions, and if there's personal information, that information can be redacted.”

But Holt argued that bill as crafted in the last Congress would extend its bar beyond research containing sensitive medical or personal information, and he pointed to an example involving toxicology research held by a private company as trade secret.

Quick Action

Holt argued that the bill as written “would also hinder fast response.” He pointed to the example of the chemical spill in the Elk River in West Virginia in 2014, of a little-studied chemical, 4-methylcyclohexane methanol (MCHM). The spill contaminated Charleston, WV's potable water supply for several days, leaving residents and businesses reliant on bottled water. The only known toxicology studies of MCHM had been conducted for its manufacturer, and were held as trade secret.

“That hindered EPA in their response. [Former Energy and Commerce Committee] Chairman [Henry] Waxman (D-CA) actually contacted the manufacturer of the chemical to find out what that was. The secret science act probably would have prevented that fast action.”

Smith did not comment on that concern.

Holt, a physicist, argued that the bill misunderstands the scientific process and seeks to overlay it with a political process. He urged the committee not to change the scientific process. “Don't try to reform the scientific process. It has served us well and will serve us well,” he said.

In response to questions from Rep. Jacky Rosen (D-NV) about the impact on EPA of not being able to use studies of one-time events, Holt explained that “many studies cannot be completed in the exact same way.” He gave examples of studies of a group of children years later, after they are grown or moved, or a study of a forest that has been invaded by an invasive species in intervening years.

By contrast, GOP-sponsored witnesses spoke in favor of the bill. Jeff Holmstead, former EPA air chief during the George W. Bush administration and now partner with the firm Bracewell & Giuliani, endorsed the bill. He considered the “only legitimate concern” that of shielding medical information, but like Smith, he called it a red herring. Holmstead argued that EPA did not need personal medical information for its decision-making.

Witness Kimberly White, a senior director with the chemical trade group the American Chemistry Council's Chemical Products and Technology Division, also argued that EPA's science needs to be strengthened. She argued that the revisions to the Toxic Substances Control Act that Congress passed last June require EPA to “ensure that its chemical assessments meet needs of decision makers and are” fit for purpose, rather than assessing all possible uses of a chemical. She added that EPA must rely on the highest quality study, rather than those showing the most risk; use a transparent weight of evidence framework for considering studies and “implement an effective peer review process.”

A third GOP witness, Richard Belzer, an economist formerly with the White House Office of Information and Regulatory Affairs, argued that the “most effective thing the committee could do is ensure the agencies follow [the White House Office of Management and Budget's] information quality guidelines.” He noted that the guidance was published more than a decade ago, but lamented that the agencies do not comply with it because it is not legally enforceable.

SAB Reform

During the hearing, Rep. Frank Lucas (R-OK), vice chairman of the science committee, sought advice on

how to improve the SAB reform bill, which like the secret science reform bill passed the House last Congress but foundered in the Senate in the face of a veto threat from former President Barack Obama.

Lucas explained his concern that the SAB is “an echo chamber for EPA.”

White agreed, saying that “there needs to be a clear balance of people participating in that process. If there is a conflict of interest, or if people make recommendations on a chemical, that needs to be balanced on the [peer review] panel.”

White also raised concerns that EPA's SAB does not have an “adequate opportunity” to consider and respond to public comments, and that there is “no check and balance” that EPA must address or respond to all of peer review panels' recommendations.

Holmstead said that he found it problematic that members of the chartered SAB are appointed by the EPA administrator based on recommendations from EPA staff within the office that manages the SAB advisors. Holmstead said that SAB advisors are well qualified, but “there does need to be a way to provide more balance.”

He also noted that another EPA advisory board, the Clean Air Scientific Advisory Committee, “for many years refused” to consider adverse economic impacts of the Clean Air Act proposed rules it advised upon, in part because no one with that expertise sat on the committee.

“I think the committee will work legislatively on that,” Lucas replied.

The SAB reform bill of 2015, H.R. 1029, sought to overhaul the membership of SAB panels, which advise the agency on scientific analyses that underlie EPA's rules. Backers of the legislation say it would help to ensure the independence of the SAB's members.

Rep. Don Beyer (D-VA) questioned Holmstead about his written statement to the committee, noting that “One of the objections we had to the act last time was that it didn't do full disclosure” of conflicts of interest.

Holmstead responded that full disclosure of “not only of financial conflict, but all conflict, is an important thing.”

And Holt, in response to questions from Rep. Jerry McNerney (D-CA), said that “SAB will not function better with fewer scientists on it.” He suggested that there are or should be other opportunities in the decision-making process to “bring in industry voices.” -- *Maria Hegstad*